



RIGHTS STUFF

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Woman Wins Sexual Harassment Lawsuit

Sheri Sheriff began working for Midwest Health Partners in 2003 as a physical therapist. One of the chiropractors at the clinic, Curtis Meyer, repeatedly treated her in ways that made her uncomfortable. He touched her and put his arm around her. She didn't report him immediately because she depended upon the chiropractors for referrals. She said she tried to guard herself from him by keeping her distance from him, but he continued to embrace her. She said that when he pulled her against his body, she felt humiliated and powerless to stop him. Sheriff complained to a nurse, who told her, "Get used to it because that's just the way he is."

In March 2004, Sheriff was in the office alone. Meyer came in and kissed her on the forehead. She said this kiss made her feel "horrible" and "very violated" so she filed a formal complaint. With the help of the office manager, she wrote Meyer a letter telling him it was not acceptable for him to touch her or kiss her. When Meyer received the letter, he apologized and said he would never do this again.

In the next two months, Sheriff learned that two female patients had complained about Meyer's inappropriate touching and kissing. She reported this to the manager.

Despite Meyer's promise, he resumed physical contact with Sheriff, grabbing her and embracing her. She sought counseling. Two months later, Meyer was walking down a hallway with Sheriff. He grabbed her three times, wrapped his arm around her shoulder, pulled her close and ran his hand down the side of one breast before squeezing the other into his body. She complained formally again. The clinic's attorney told the clinic "to take aggressive action to protect itself" and made recommendations about what the clinic should do.

Seven weeks after the last complaint, Midwest management finally met with Meyer to discuss the situation. The clinic asked Meyer to participate in counseling and to sign a letter acknowledging the complaints about "acts of sexual impropriety and familiarity you have committed." The clinic also set out probation conditions for Meyer and told him additional complaints could lead to his termination. He refused to attend counseling or to sign the letter. He began intimidating and mocking Sheriff. He held his hands in the air around patients to show he was not touching them. He sat next to her at meetings, even when there were other seats available. He blocked a doorway and told her it was time for her to put her problems aside. Sheriff

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Medical Examinations And The ADA

The Americans with Disabilities Act says that an employer may not require a medical examination to determine whether an employee has a disability "unless such examination or inquiry is shown to be job-related and consistent with medical necessity." The Ninth Circuit Court of Appeals recently held that in some cases, employers may require medical exams even if the employee's work performance has not declined.

Oscar Brownfield was a police officer with the City of Yakima, Washington. In 2004, he began writing memos about alleged unethical work practices on the part of other officers. During a meeting to discuss these issues, he used an expletive and said he had to go talk to a union representative. His supervisor ordered him to stay at the meeting, but he left anyway. The department suspended him for insubordination. He said he was consumed with anger and that he needed to take a break.

A year later, in a one-month period, four incidents occurred that raised concerns for Brownfield's supervisors:

- Brownfield engaged in a disruptive argument with another officer, swearing and "just not really speaking full sentences."
- He reported that he felt

himself losing control during a traffic stop because a young child in the car was taunting him. He said he became upset, his legs began shaking and he wasn't sure what he was going to do. He calmed down when back up arrived.

- His estranged wife reported that he had struck her.
- He made several statements such as "It's not important anyway," "I'm not sure if it's worth it" and "It doesn't matter how this ends." After this, his captain put him on administrative leave and ordered him to undergo a fitness for duty exam.

The doctor said Brownfield was unfit for duty and placed him on FMLA leave. Shortly after that, he was injured in a car accident. His doctor said he was physically able to return to work but did not answer questions about his mental abilities. He went to a second doctor who thought that his mental or emotional issues might improve with treatment, but Brownfield did not attend the follow-up session.

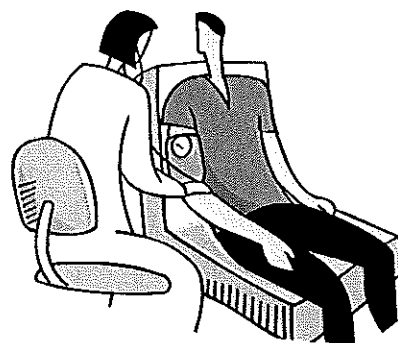
The department told Brownfield he would be fired if he didn't cooperate with the treatment. He didn't and was fired. He sued, alleging that the department violated the ADA. He said that since his work performance had not suffered because of his health problems,

the department should not have been allowed to send him for a fitness for duty exam.

The Court disagreed, saying "Employers need to be able to use reasonable means to ascertain the cause of troubling behavior without exposing themselves to ADA claims." The Court said that "prophylactic psychological examinations can sometimes satisfy the business necessity standard, particularly when the employer is engaged in dangerous work."

Given that Brownfield had "exhibited highly emotional responses on numerous occasions" in 2005, the exam requirement was reasonable and consistent with the ADA, according to the Court.

The case is Brownfield v. City of Yakima, 612 F. 3d 1140 (9th Cir. 2010). ♦





Sexual Harassment Lawsuit (continued from page 1)

reported each of these incidents.

Three months after he first met with management, Meyer finally agreed to attend sexual harassment training, but he continued to refuse mental health counseling. Midwest understood he would attend sexual harassment training on five separate days, but he went to only one session.

Management told Sheriff that Meyer was going to be fired in 45 days, but he was not, and no one ever told Sheriff why he wasn't. She was not told anything else about the investigation. She said she continued to receive counseling for her increased anxiety, stress, depression and shortness of breath. She said the stress caused her to suffer from migraine headaches, which made

her miss work and interfered with her family life. She believed that Midwest would never take action against Meyer, so she quit and filed a lawsuit alleging sex discrimination. She won at trial. Midwest appealed, but she won there as well.

On appeal, Midwest argued that there was not evidence showing that Meyer treated Sheriff differently because of her sex, saying he was a "touchy person" who patted men on the buttocks as well. But the Court noted that there was "no evidence that Meyer pulled men into his body." No man complained about him, but four women did, and this was enough to justify an inference that his behavior was sexually discriminatory.

Midwest also argued that it responded to Sheriff's complaints promptly and effectively. But given that the clinic took no action for seven weeks after she complained, didn't keep her informed, never let her know who was in charge of the investigation, didn't enforce its remedies against Meyer and didn't stop Meyer from harassing her more, the Court disagreed.

Sheriff won \$100,000 in compensatory damages at the trial level, which the Court of Appeals upheld.

The case is Sheriff v. Midwest Health Partners, P.C., 619 F. 3d 923 (8th Cir. 2010). If you have questions or concerns about sexual harassment laws, please contact the BHRC. ♦

Not Gay Enough?

Three California men were on a softball team called D2 that advanced to the championship game in the Gay Softball World Series. A team that they beat complained that D2 was violating a league rule that said there could be no more than two heterosexual players on a team.

After the championship game, which D2 lost, the North American Gay Amateur Athletic Alliance called each of the three men into a room for a separate "hearing" to determine each athlete's sexual orientation. The three men said they were forced to answer "highly personal and

intrusive questions" about their sexual interests and private life, including whether they were predominantly attracted to men or women. One of the men said he was told, "This is the Gay World Series, not the Bisexual World Series."

The alliance ruled that the three men were non-gay. It stripped D2 of its second-place finish and recommended that the three men be suspended from participating in the Gay Softball World Series for a year.

The three men have filed a lawsuit. Each is seeking \$75,000 for

emotional distress. They also want the alliance's finding that they are "non-gay" to be invalidated, and they want D2's second place finish reinstated. The case is still pending.

The alliance said that it did not discriminate against anyone illegally, and said that as a private organization, it can determine its membership as it sees fit.

The North American Gay Amateur Athletic Alliance was formed in 1977. It has more than 680 teams in 37 leagues across the United States and Canada. ♦



Three Local Women Win Awards

Mayor Mark Kruzan announced that three local women will be honored this March for their outstanding service to the community.

Georg'ann Cattelone has been named Bloomington's Woman of the Year, Sue Webster has been named the recipient of the Lifetime Contribution Award, and Sheri Benham has been chosen to receive the Emerging Leader Award.

The recipients were selected by members of the Women of the Year Subcommittee of the City of Bloomington's Commission on the Status of Women. The Woman of the Year and Lifetime Contribution Award recipients will be honored at the Women's

History Month lunch on Tuesday, March 8, at the Convention Center of Bloomington – Monroe County, 302 S. College Avenue.

The lunch is an opportunity to recognize individual and collective accomplishments of women in the community. In addition, organizations for women and women-owned businesses will have exhibits at the luncheon. The exhibit reservation form is available at

www.bloomington.in.gov/csw.

The theme of this year's event, which will be held on International Women's Day, is "Our History is Our Strength." The Honorable Dr. Julia Duany,

Undersecretary of Parliamentary Affairs Government of Southern Sudan, will be the keynote speaker at the luncheon.

The Women's History Month Lunch begins at 12:15 p.m. on March 8. Doors open at 11:15 a.m. for viewing of women's exhibits. The cost is \$20 per seat; seats must be purchased in advance. Checks payable to "City of Bloomington—Women's History Month Lunch" along with the name to appear on the guest list may be sent to Women's History Month Lunch, Commission on the Status of Women, PO Box 100, Bloomington, IN 47402. The deadline for purchasing seats is Friday, March 4. Scholarships are available for individuals who need assistance purchasing a seat to attend the lunch.

Leadership Through Advocacy

A Women's Leadership Development Event will be held on Thursday, March 31, from 5 to 7:30 p.m., at Showers City Hall, 401 N. Morton Street. The agenda for the meeting includes the following:

- The presentation of the 2011 Emerging Leadership Award to winner Sheri Benham;
- A panel discussion in which

leadership scholarship recipients will share their learning experiences;

- A keynote presentation by Dawn Johnsen, Walker W. Foscett Professor of Law at the Mauer Law School; and
- A closing session by Janet Wakefield, CEO of Leadership & Renewal Outfitters.

This event is free and open to the public. It's sponsored by the Bloomington Commission on the Status of Women and the Office of the City Clerk.